

No. _____ 05 - 764 DEC 12 2005

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In The
Supreme Court of the United States

RICHARD A. GOECKEL and
KATHLEEN D. GOECKEL,

Petitioners,

v.

JOAN M. GLASS,

Respondent.

**On Petition For A Writ Of Certiorari
To The Michigan Supreme Court**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the Michigan Supreme Court effect an unconstitutional taking in violation of the Fifth and Fourteenth Amendments and violate Due Process when it ignored and misconstrued clearly established Michigan common law and ruled that under the so-called "public trust doctrine," the public has a right to walk on private beaches of riparian owners?

PARTIES TO THE PROCEEDING

The only parties to the proceeding in the court whose judgment is sought to be reviewed are listed in the caption. Amicus briefs were submitted or endorsed by fifteen state and national private and public entities and groups.

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OPINIONS BELOW

The Opinion of the Michigan Supreme Court (App. A) is reported at 473 Mich 667, 703 NW2d 58 (2005). That Court's Order Denying Motion for Rehearing (App. G) is reported at 474 Mich 1201, 703 NW2d 188 (2005). The Opinion of the Michigan Court of Appeals (App. D) is reported at 262 Mich App 29, 63 NW2d 719 (2004). The Opinion of the Alcona County Circuit Court (App. E) is unreported.

JURISDICTION

The Michigan Supreme Court entered its Opinion, constituting its Judgment, on July 29, 2005. App. A. The Court entered its Order Denying Motion for Rehearing on September 14, 2005. App. G. The jurisdiction of this Court is invoked under 28 USC §1257.

CONSTITUTIONAL PROVISIONS INVOLVED

This appeal involves two provisions of the Constitution of the United States. The Fifth Amendment provides as follows:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be

deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation (emphasis added).

The Fourteenth Amendment, §1, to the United States Constitution provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws (emphasis added).*

STATEMENT OF THE CASE

Joan Glass owns property behind and across the road from the lakefront cottage of Richard and Kathleen Goeckel. That cottage overlooks, and is adjacent to, Lake Huron, one of the five Great Lakes. The 1967 deed to Glass conveys an express "easement for ingress and egress to Lake Huron" over the north fifteen feet of the Goeckels' property.

A dispute arose regarding the use of that easement, and Glass filed suit on the issue. As part of an amended complaint, Glass additionally asserted that the Goeckels were interfering with her claimed right to walk along the shore of Lake Huron lying below and lakeward of a so-called "ordinary high water mark." The trial court awarded summary disposition in favor of Joan Glass,

finding that she had a right to use the Goeckels' property below the "natural ordinary high water mark" for "pedestrian travel, without interference from the Defendants." App. E. The trial court based its ruling on a statute commonly known as the Great Lakes Submerged Lands Act, MCL 324.32501 *et seq.*

The Goeckels appealed. They argued that the Great Lakes Submerged Lands Act did not apply to their dry beach, and that under Michigan common law, they had fee simple title, which included the right of exclusive use to the water's edge. The Michigan Court of Appeals agreed that the Great Lakes Submerged Lands Act did not apply, and that the Goeckels had the right of exclusive use to the water's edge. It found, however, that the State held title in public trust to the so-called "ordinary high water mark." App. D.

Appealing to the Michigan Supreme Court Mrs. Glass again argued that the Great Lakes Submerged Lands Act granted the State title in public trust to the statutorily defined ordinary high water mark, and that by virtue of both the statute and common law, she had the right to walk the Goeckels' beach up to that mark. Among other things, Defendants argued that by granting title to the State, the Court of Appeals effected an unconstitutional taking. Brief on Appeal – Appellees', pp 21-25. In a highly publicized 5-2 decision that gained national attention, the Michigan Supreme Court ruled that by virtue of the public trust doctrine, Glass had a right to walk the beach along Lake Huron, including the Goeckels' beach, up to a point it referred to as the "ordinary high water mark." App. A. The ruling assumed that the beach was that of the Goeckels, but nevertheless found their rights subject to the public trust doctrine. It found that the doctrine includes the right